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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ENVIRONMENTAL DEFENSE  
CENTER, a non-profit corporation,

Plaintiff,

vs.

PACIFIC COAST ENERGY  
COMPANY LP, a limited partnership,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

1 ENVIRONMENTAL DEFENSE CENTER (“EDC”), a California non-profit  
2 association, by and through its counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions  
5 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean  
6 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties  
7 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
8 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the  
9 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02  
10 (power to issue declaratory relief in case of actual controversy and further necessary  
11 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);  
12 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

13 2. On April 17, 2018, Plaintiff provided notice of Defendant’s violations of  
14 the Act, and of Plaintiff’s intention to file suit against Defendant, to the Administrator  
15 of the United States Environmental Protection Agency (“EPA”); the Administrator of  
16 EPA Region IX; the Executive Director of the State Water Resources Control Board  
17 (“State Board”); the Executive Officer of the California Regional Water Quality  
18 Control Board, Central Coast Region (“Regional Board”); and to Defendant, as  
19 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of EDC’s  
20 notice letter is attached as Exhibit A, and is incorporated by reference.

21 3. More than sixty days have passed since notice was served on Defendant  
22 and the State and federal agencies. Plaintiff is informed and believes, and thereupon  
23 alleges, that neither the EPA nor the State of California has commenced or is  
24 diligently prosecuting a court action to redress the violations alleged in this complaint.  
25 This action’s claim for civil penalties is not barred by any prior administrative penalty  
26 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

27 4. Venue is proper in the Central District of California pursuant to Section  
28

505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

## **II. INTRODUCTION**

5. This complaint seeks relief for Defendant's discharges of polluted storm water and non-storm water pollutants from Defendant's Orcutt Hill oil and gas field located at 1555 Orcutt Hill Road in Orcutt, California ("Orcutt Hill" or "Facility") in violation of the Act and California's General Permit for Storm Water Discharges Associated With Industrial Activities, National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board ("State Board") Water Quality Order No. 2015-0057-DWQ ("General Permit"). Defendant's violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the General Permit and the Act are ongoing and continuous.

## **III. PARTIES**

6. Plaintiff EDC is a California non-profit corporation and law firm with its principal place of business located at 906 Garden Street, Santa Barbara, CA 93101. EDC was founded in 1977 and is dedicated to the preservation and enhancement of the local environment through education, advocacy, and legal action. EDC represents itself and other organizations in protecting coast and ocean resources, open spaces and wildlife, and human and environmental health. EDC has approximately 3,000 members, including scientists, lawyers, students and citizens who live, recreate, and work in and around waters of the State of California, including creeks flowing near the Orcutt Hill oil and gas field. EDC was formed to empower local citizens "to protect themselves and their communities" by serving as "the legal action arm of the environmental community." EDC brings this action on behalf of its members. EDC's interests in reducing Defendant's discharges of pollutants into coastal rivers and creeks, the Pacific Ocean and coastal creeks flowing into the Ocean and requiring

1 Defendant to comply with the requirements of the General Permit are germane to its  
 2 purposes. Litigation of the claims asserted and relief requested in this Complaint does  
 3 not require the participation in this lawsuit of individual members of EDC.

4 7. Members of EDC reside in coastal communities that value and depend  
 5 upon the Pacific Ocean, as well as the surface waters which eventually flow into the  
 6 ocean. The Orcutt Hill oil and gas field is located near the San Antonio Creek and  
 7 Orcutt Creek. San Antonio Creek flows into the Pacific Ocean. Orcutt Creek flows  
 8 into the Santa Maria River and then into the Pacific Ocean. Members of EDC use and  
 9 enjoy the waters into which Defendant has caused, is causing, and will continue to  
 10 cause, pollutants to be discharged. Plaintiff's members use these areas to swim, bird  
 11 watch, boat, sail, kayak, surf, view wildlife, fish, and engage in scientific study  
 12 including monitoring activities, among other things. Defendant's discharges of  
 13 pollutants threaten or impair each of those uses or contribute to such threats and  
 14 impairments. Thus, the interests of Plaintiff's members have been, are being, and will  
 15 continue to be adversely affected by Defendant's failure to comply with the Clean  
 16 Water Act and the General Permit. The relief sought herein will redress the harms to  
 17 Plaintiff caused or contributed to by Defendant's activities.

18 8. Continuing commission of the acts and omissions alleged above will  
 19 irreparably harm Plaintiff and one or more of its members, for which harm they have no  
 20 plain, speedy or adequate remedy at law.

21 9. Defendant Pacific Coast Energy Company LP ("PCEC") is a limited  
 22 partnership organized under the laws of Delaware. PCEC is an independent energy  
 23 company headquartered in Orcutt, California, focused on the acquisition and  
 24 development of oil and gas resources in California.  
 25

#### 26 **IV. STATUTORY BACKGROUND**

27 10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
 28 any pollutant into waters of the United States, unless such discharge is in compliance

1 with various enumerated sections of the Act. Among other things, Section 301(a)  
2 prohibits discharges not authorized by, or in violation of, the terms of an NPDES  
3 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4 11. Section 402(p) of the Act establishes a framework for regulating  
5 municipal and industrial storm water discharges under the NPDES program. 33  
6 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by  
7 Section 402(p) to regulate industrial storm water discharges through individual  
8 permits issued to dischargers or through the issuance of a single, statewide general  
9 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

10 12. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator  
11 of the U.S. EPA has authorized California's State Board to issue NPDES permits  
12 including general NPDES permits in California.

13 13. The State Board elected to issue a statewide general permit for industrial  
14 storm water discharges. The State Board originally issued the General Permit on or  
15 about November 19, 1991. The State Board modified the General Permit on or about  
16 September 17, 1992. Pertinent to this action, the State Board reissued the General  
17 Permit on or about April 17, 1997, and again on or about April 1, 2014, pursuant to  
18 Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

19 14. In order to discharge storm water lawfully in California, industrial  
20 dischargers must comply with the terms of the General Permit or have obtained and  
21 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

22 15. The General Permit contains several prohibitions. Effluent Limitation  
23 V(A) requires dischargers to reduce or prevent pollutants in their storm water  
24 discharges through implementation of the Best Available Technology Economically  
25 Achievable ("BAT") for toxic and nonconventional pollutants and the Best  
26 Conventional Pollutant Control Technology ("BCT") for conventional pollutants.  
27 Discharge Prohibition III(C) prohibits storm water discharges and authorized non-  
28

1 storm water discharges that cause or threaten to cause pollution, contamination, or  
2 nuisance. Receiving Water Limitation VI(B) prohibits storm water discharges to any  
3 surface or ground water that adversely impact human health or the environment.  
4 Receiving Water Limitation VI(A) and Discharge Prohibition III(D) prohibit storm  
5 water discharges that cause or contribute to an exceedance of any applicable water  
6 quality standards contained in Statewide Water Quality Control Plan or the applicable  
7 Regional Board's Basin Plan.

8 16. In addition to absolute prohibitions, the General Permit contains a variety  
9 of substantive and procedural requirements that dischargers must meet. Facilities  
10 discharging, or having the potential to discharge, storm water associated with  
11 industrial activity that have not obtained an individual NPDES permit must apply for  
12 coverage under the State's General Permit by filing a Notice of Intent to Comply  
13 ("NOI"). Dischargers have been required to file NOIs since March 30, 1992.

14 17. Dischargers must develop and implement a Storm Water Pollution  
15 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities  
16 and measures that comply with the BAT and BCT standards. The General Permit  
17 requires that an initial SWPPP has been developed and implemented before October  
18 1, 1992. The objective of the SWPPP requirement is to identify and evaluate sources  
19 of pollutants associated with industrial activities that may affect the quality of storm  
20 water discharges and authorized non-stormwater discharges from the facility, and to  
21 implement best management practices ("BMPs") to reduce or prevent pollutants  
22 associated with industrial activities in storm water discharges and authorized non-  
23 storm water discharges. *See* General Permit § X(C). These BMPs must achieve  
24 compliance with the General Permit's effluent limitations and receiving water  
25 limitations, including the BAT and BCT technology mandates. To ensure compliance  
26 with the General Permit, the SWPPP must be evaluated and revised as necessary.  
27 General Permit § X(B). Failure to develop or implement an adequate SWPPP, or  
28

1 update or revise an existing SWPPP as required, is a violation of the General Permit.  
2 General Permit Fact Sheet § I(1).

3 18. Section X of the General Permit sets forth the requirements for a  
4 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention  
5 team; a site map; a list of significant materials handled and stored at the site; a  
6 description of potential pollutant sources; an assessment of potential pollutant sources;  
7 and a description of the BMPs to be implemented at the facility that will reduce or  
8 prevent pollutants in storm water discharges and authorized non-storm water  
9 discharges, including structural BMPs where non-structural BMPs are not effective.  
10 The General Permit also requires all dischargers to develop and implement a set of  
11 minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT,  
12 which serve as the basis for compliance with the General Permit's technology-based  
13 effluent limitations and receiving water limitations. *See* General Permit § X(H). The  
14 General Permit requires dischargers to implement and maintain, to the extent feasible,  
15 all of the following minimum BMPs in order to reduce or prevent pollutants in  
16 industrial storm water discharges: good housekeeping, preventive maintenance, spill  
17 and leak prevention and response, material handling and waste management, erosion  
18 and sediment controls, an employee training program, and quality assurance and  
19 record keeping. *See* General Permit § X(H)(1). Failure to implement all of these  
20 minimum BMPs is a violation of the General Permit. *See* General Permit Fact Sheet §  
21 I(2)(o). The General Permit further requires dischargers to implement and maintain,  
22 to the extent feasible, any one or more of the following advanced BMPs necessary to  
23 reduce or prevent discharges of pollutants in industrial storm water discharges:  
24 exposure minimization BMPs, storm water containment and discharge reduction  
25 BMPs, treatment control BMPs, and other advanced BMPs. *See* General Permit §  
26 X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance  
27 with either technology or water quality standards is a violation of the General Permit.  
28



1 *Id.* The General Permit also requires that the SWPPP include BMP descriptions and a  
2 BMP summary table. *See* General Permit §§ X(H)(4), (5).

3 19. The General Permit requires dischargers to develop and implement an  
4 adequate written Monitoring and Reporting Program. The primary objective of the  
5 Monitoring and Reporting Program is to detect and measure the concentrations of  
6 pollutants in a facility's discharge to ensure compliance with the General Permit's  
7 discharge prohibitions, effluent limitations, and receiving water limitations. As part  
8 of their monitoring program, dischargers must identify all storm water discharge  
9 locations that produce a significant storm water discharge, evaluate the effectiveness  
10 of BMPs in reducing pollutant loading, and evaluate whether pollution control  
11 measures set out in the SWPPP are adequate and properly implemented. The General  
12 Permit mandates that facility operators sample four storm water discharges from all  
13 discharge locations from a facility over the course of the reporting year. *See* General  
14 Permit §§ XI(B)(2), (3).

15 20. Facilities are required to make monthly visual observations of storm  
16 water discharges. The visual observations must represent the quality and quantity of  
17 the facility's storm water discharges from the storm event. General Permit § XI(A).

18 21. Under the General Permit, facilities must analyze storm water samples  
19 for "[a]dditional parameters identified by the Discharger on a facility-specific basis  
20 that serve as indicators of the presence of all industrial pollutants identified in the  
21 pollutant source assessment." General Permit § XI(B)(6)(c).

22 22. The General Permit does not provide for any mixing zones by  
23 dischargers. The General Permit does not provide for any receiving water dilution  
24 credits to be applied by dischargers.

25 23. The Regional Board has established water quality standards for the Santa  
26 Maria River, San Antonio Creek, and Orcutt Creek Watersheds in the "Water Quality  
27 Control Plan for the Central Coast Basin," generally referred to as the Basin Plan.  
28



1           24. The Basin Plan includes a narrative toxicity standard which states that  
2 “[a]ll waters shall be maintained free of toxic substances in concentrations which are  
3 toxic to, or that produce detrimental physiological responses in, human, plant, animal,  
4 or aquatic life.”

5           25. The Basin Plan provides that “[w]aters shall not contain settleable  
6 material in concentrations that result in deposition of material that causes nuisance or  
7 adversely affects beneficial uses.”

8           26. The Basin Plan provides that “[w]aters shall not contain suspended  
9 material in concentrations that cause nuisance or adversely affect beneficial uses.”

10           27. The Basin Plan has a narrative oil and grease standard which states that  
11 “[w]aters shall not contain oils, greases, waxes, or other similar materials in  
12 concentrations that result in a visible film or coating on the surface of the water or on  
13 objects in the water, that cause nuisance, or that otherwise adversely affect beneficial  
14 uses.”

15           28. The Basin Plan provides that “[w]aters shall be free of changes in  
16 turbidity that cause nuisance or adversely affect beneficial uses.”

17           29. The Basin Plan provides that “[t]he suspended sediment load and  
18 suspended sediment discharge rate of surface waters shall not be altered in such a  
19 manner as to cause nuisance or adversely affect beneficial uses.”

20           30. The Basin Plan provides that “[w]aters shall not contain floating material,  
21 including solids, liquids, foams, and scum, in concentrations that cause nuisance or  
22 adversely affect beneficial uses.”

23           31. The Basin Plan provides that “[w]aters shall be free of coloration that  
24 causes nuisance or adversely affects beneficial uses.”

25           32. For waters with a beneficial use of cold freshwater habitat, the Basin Plan  
26 provides that “[t]he pH value shall neither be depressed below 7.0 nor raised above  
27 8.3.”  
28

1           33. EPA has established Parameter Benchmark Values as guidelines for  
2 determining whether a facility discharging industrial storm water has implemented the  
3 requisite BAT and BCT. These benchmarks represent pollutant concentrations at  
4 which a storm water discharge could potentially impair, or contribute to impairing,  
5 water quality, or affect human health from ingestion of water or fish. The following  
6 EPA benchmarks have been established for pollution parameters applicable to Orcutt  
7 Hill: pH—6.0-9.0 s.u.; total suspended solids (“TSS”)—100 mg/L; and oil and grease  
8 (“O&G”)—15 mg/L.

9           34. These benchmarks are reflected in the General Permit in the form of  
10 Numeric Action Levels (“NALs”). The General Permit incorporates annual NALs,  
11 which reflect the EPA’s 2008 Multi-State General Permit benchmark values, and  
12 instantaneous maximum NALs, which are derived from a Water Board dataset. The  
13 following annual NALs have been established under the General Permit: TSS—100  
14 mg/L; and O&G—15 mg/L. An exceedance of annual NALs occurs when the average  
15 of all samples obtained for an entire facility during a single reporting year is greater  
16 than a particular annual NAL. The reporting year runs from July 1 to June 30. The  
17 General Permit also establishes the following instantaneous maximum NALs: pH—  
18 6.0-9.0 s.u.; TSS—400 mg/L; and O&G—25 mg/L. An instantaneous maximum  
19 NAL exceedance occurs when two or more analytical results from samples taken for  
20 any single parameter within a reporting year exceed the instantaneous maximum NAL  
21 value (for TSS and O&G) or are outside of the instantaneous maximum NAL range  
22 for pH. When a discharger exceeds an applicable NAL, it is elevated to “Level 1  
23 Status,” which requires a revision of the SWPPP and additional BMPs necessary to  
24 prevent future NAL exceedances. If a discharger exceeds an applicable NAL during  
25 Level 1 Status, it is then elevated to “Level 2 Status.” For Level 2 Status, a discharger  
26 is required to submit an Action Plan requiring a demonstration of either additional  
27 BMPs to prevent exceedances, a determination that the exceedance is solely due to  
28 non-industrial pollutant sources, or a determination that the exceedance is solely due

1 to the presence of the pollutant in the natural background.

2 35. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
3 enforcement actions against any “person,” including individuals, corporations, or  
4 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)  
5 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33  
6 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil  
7 penalties of up to \$52,414 for violations occurring after November 2, 2015; and up to  
8 \$37,500 per day per violation occurring since October 28, 2011, up to and including  
9 November 2, 2015, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§  
10 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

## 11 **V. STATEMENT OF FACTS**

12 36. Defendant PCEC owns and/or operates the Orcutt Hill oil and gas  
13 facility, located on 6,000 acres in the northern section of Santa Barbara County.

14 37. Orcutt Hill falls within SIC Code 1311 (crude petroleum & natural gas).  
15 The SIC Manual defines SIC code 1311 as including “[e]stablishments primarily  
16 engaged in operating oil and gas field properties. Such activities may include  
17 exploration for crude petroleum and natural gas; drilling, completing, and equipping  
18 wells; operation of separators, emulsion breakers, desilting equipment, and field  
19 gathering lines for crude petroleum; and all other activities in the preparation of oil  
20 and gas up to the point of shipment from the producing property.” *Available at:*  
21 [https://www.osha.gov/pls/imis/sic\\_manual.display?id=387&tab=](https://www.osha.gov/pls/imis/sic_manual.display?id=387&tab=)  
22 *description.* On information and belief, EDC alleges that the industrial activities  
23 conducted at the Orcutt Hill oil and gas field include crude oil and natural gas  
24 production; seep cans; crude oil separation, storage, and transfer to pipelines; natural  
25 gas treatment and reuse; produced water storage and injection; well drilling; acidizing,  
26 well completion and stimulation; above ground storage tanks and vessels; outdoor  
27 solid materials storage; and maintenance activities, including road maintenance.  
28

1           38. Based on the Facility's NOI and SWPPP, review of aerial photography,  
2 and EDC's information and belief, storm water is collected and discharged from the  
3 5,400-acre oil and gas field through a diverse range of point sources dispersed  
4 throughout the field.

5           39. For example, PCEC continues to maintain an extensive road system  
6 throughout the Orcutt Hill oil and gas field. According to EDC's information and  
7 belief, and the review of aerial photographs, numerous erosion gullies and channels  
8 caused by runoff from the Facility's roads exist throughout the Facility. These roads  
9 and erosion gullies discharge substantial quantities of sediment, turbidity, TDS, and  
10 other pollutants to the creeks within the oil and gas field and subsequently Orcutt  
11 Creek, San Antonio Creek, and flow into the Santa Maria River and the Pacific  
12 Ocean. Numerous landslides with erosion gullies and channels have also resulted  
13 from the Facility's construction and maintenance of roads, drilling pads, thermal  
14 injection activities, and other features that have undercut adjacent hillsides and caused  
15 caving and landslides and subsequent erosion channels.

16           40. Defendant channels and collects storm water falling on the Facility  
17 through a series of channels that lead to at least nine storm water outfalls. Storm  
18 water from the various point sources within the Orcutt Hill oil and gas field is  
19 eventually discharged to channels that flow either into tributaries that flow to San  
20 Antonio Creek or into tributaries that flow to Orcutt Creek. Orcutt Creek flows into  
21 the Santa Maria River.  
22

23           41. As stated by the EPA, "oil, gas and mining facilities are among those  
24 industrial sites that are likely to discharge storm water runoff that is contaminated by  
25 process wastes, toxic pollutants, hazardous substances, or oil and grease," and that  
26 "such contamination can include disturbed soils and process wastes containing heavy  
27 metals or suspended or dissolved solids, salts, surfactants, or solvents used or  
28 produced in oil and gas operations." *NPDES Permit Application Requirements for*

1 *Storm water Discharges*, 55 Fed. Reg. 47,990 at p. 55-56 (Nov. 16, 1990). EPA notes  
2 that because oil and gas operations [such as the Orcutt Hill oil and gas field] “have the  
3 potential for serious water quality impacts, Congress recognized . . . the need to  
4 control storm water discharges from oil, gas, and mining operations.” *Id.*

5 42. Plaintiff is informed and believes, and thereupon alleges that the storm  
6 water flows over the surface of the Facility’s industrial features, collecting suspended  
7 sediment, dirt, and other pollutants as it flows towards the Facility’s storm water  
8 outfalls, which discharge into channels that flow untreated either into San Antonio  
9 Creek, or into Orcutt Creek and then the Santa Maria River.

10 43. On information and belief, Plaintiff alleges that the majority of storm  
11 water discharges from the Facility contain storm water that is commingled with runoff  
12 from areas at the Facility where industrial processes occur.

13 44. Plaintiff is informed and believes, and thereupon alleges, that the  
14 management practices at the Orcutt Hill oil and gas field are currently inadequate to  
15 prevent the sources of contamination described above from causing the discharge of  
16 pollutants to waters of the United States. The Facility lacks sufficient structural  
17 controls such as grading, berming, roofing, containment, or drainage structures to  
18 prevent rainfall and storm water flows from coming into contact with exposed areas of  
19 contaminants. The Facility lacks sufficient structural controls to prevent the discharge  
20 of water once contaminated. The Facility lacks adequate storm water pollution  
21 treatment technologies to treat storm water once contaminated.

22 45. Since at least February 10, 2017, PCEC has taken samples or arranged  
23 for samples to be taken of storm water discharges at the Facility. The sample results  
24 were reported by the Facility in uploads to the State Board’s Stormwater Multiple  
25 Application and Report Tracking System (“SMARTS”).

26 46. The Facility has consistently reported high pollutant levels of TSS from  
27 its sampling results in nearly all of its storm water sampling locations.  
28

1           47. The Facility has reported numerous discharges in excess of narrative and  
2 numeric water quality standards established in the Basin Plan. These observations  
3 have thus violated narrative and numeric water quality standards established in the  
4 Basin Plan and have thus violated Discharge Prohibitions III(C) and III(D) and  
5 Receiving Water Limitations VI(A) and VI(B) of the General Permit, and are  
6 evidence of ongoing violations of Effluent Limitation V(A) of the General Permit. On  
7 February 20, 2017, the Facility observed turbidity in storm water discharged from  
8 Sampling Locations #2, 6, and 7. On March 21, 2017, the Facility observed turbidity  
9 in storm water discharged from Sampling Locations #1, 2, and 7. On January 9, 2018,  
10 the Facility observed turbidity in storm water discharged from the Main Facilities  
11 Culvert and Pipe Yard Surface Runoff sampling locations. On March 13, 2018, the  
12 Facility observed turbidity in storm water discharged from Sampling Location #1. On  
13 March 21, 2018, the Facility observed turbidity in storm water discharged from the  
14 Field Welders, Dome 19, Main Facilities, Pipe Yard, Fueling Area, Folsom 9, Pinal  
15 Tank Farm, and Pinal 7 sampling locations. These discharges violate the narrative  
16 standard set forth in the Basin Plan for turbidity. On January 9, 2018, the Facility  
17 observed oil and grease in storm water discharged from the Pipe Yard Surface Runoff  
18 sampling location, which violates the narrative standard set forth in the Basin Plan for  
19 oil and grease. On March 21, 2017, the Facility measured a storm water discharge  
20 with a pH levels of 6.91 from Sampling Location #7, which is in violation of the water  
21 quality standard for pH set forth in the Basin Plan.  
22

23           48. The levels of TSS in storm water detected by the Facility have exceeded  
24 the benchmark value and annual NAL for TSS of 100 mg/L established by EPA and  
25 the State Board, respectively, and the instantaneous maximum NAL value for TSS of  
26 400 mg/L established by the State Board. For example, on March 21, 2017, the level  
27 of TSS measured by Defendant at one of its outfalls was 2,800 mg/L. That level of  
28 TSS is 28 times the benchmark value and annual NAL for TSS, and four times the



1 instantaneous maximum NAL for TSS. PCEC also has measured levels of TSS in  
2 storm water discharged from the Facility in excess of 100 mg/L in nearly every  
3 discharge from the Facility measured since it has received coverage under the General  
4 Permit, including the following dates: March 21, 2018; March 13, 2018; January 9,  
5 2018; March 21, 2017; and February 10, 2017. In addition, PCEC has measured  
6 levels of TSS in storm water discharged from the Facility in excess of 400 mg/L in  
7 three sampling results during the 2017-2018 reporting year and in every sampling  
8 result during the 2016-2017 reporting year. Specific dates on which PCEC has  
9 measured such exceedances, and the levels and locations of such exceedances, are  
10 contained in the Notice Letter attached as Exhibit A.

11 49. EDC is aware that PCEC has filed documents with the State Board  
12 noting that the sources of TSS at the Facility are not from industrial activities at the  
13 Facility but are more likely naturally occurring. The General Permit includes  
14 “Natural Background Pollutant Source Demonstration” as a category of “Exceedance  
15 Response Actions (“ERAs”). General Permit, § XII(D)(2)(c). In order to qualify as an  
16 ERA under this category, the discharger must meet nine requirements, including the  
17 fundamental requirement to show that the pollutant exceedance (in this case, TSS) is  
18 “attributable *solely* to the presence of the pollutant in the natural background that has  
19 not been disturbed by industrial activities.” On information and belief, EDC alleges  
20 that PCEC has not made this demonstration, and accordingly is not exempt from TSS  
21 effluent limitation requirements under the General Permit. PCEC is responsible for  
22 runoff from disturbed areas at the Facility, as these areas have the potential to  
23 contribute to sediment runoff.

24 50. During the 2015-2016 reporting year, and during the first half of the  
25 2016-2017 reporting year, the Facility failed to collect and analyze any storm water  
26 discharge samples. On information and belief, EDC alleges that there were sampling  
27 opportunities during these reporting periods for the Facility to conduct the required  
28



1 sampling and analysis.

2 51. On information and belief, EDC alleges that PCEC failed to sample from  
3 all nine sampling locations at the Facility during the 2015-2016 and 2016-2017  
4 reporting years. The samples taken in 2017 were only from four different sampling  
5 locations at the Facility, and PCEC has represented that there are at least nine storm  
6 water sampling locations at the Facility.

7 52. On information and belief, EDC alleges that PCEC has failed to monitor  
8 for a number of pollutants in storm water discharges at the Facility, including but not  
9 limited to total petroleum hydrocarbons, chemical oxygen demand, chlorides, barium,  
10 naphthalene, phenanthrene, benzene, lead, arsenic, fluoride, acetone, toluene, ethanol  
11 xylenes, barium, antimony, aluminum, zinc, antimony, copper, mercury, and nickel.

12 53. On information and belief, EDC alleges that PCEC has failed to complete  
13 an Annual Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) for  
14 the 2016-2017 reporting year in compliance with Section XV of the General Permit.

15 54. On information and belief, Plaintiff alleges that since July 15, 2015,  
16 PCEC has failed to implement BAT and BCT at the Facility for its discharges of TSS,  
17 pH, and other un-monitored pollutants. Effluent Limitation V(A) of the General  
18 Permit requires that PCEC implement BAT for toxic and nonconventional pollutants  
19 and BCT for conventional pollutants by no later than October 1, 1992, or the date that  
20 the Facility first received coverage under the General Permit. As of the date of this  
21 Complaint, PCEC has failed to implement BAT and BCT.

22 55. On information and belief, Plaintiff alleges that since July 15, 2015,  
23 PCEC has failed to implement an adequate SWPPP for the Facility. Plaintiff is  
24 informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility  
25 does not set forth site-specific best management practices for the Facility that are  
26 consistent with BAT or BCT for the Facility. Plaintiff is informed and believes, and  
27 thereupon alleges, that the SWPPP prepared for the Facility does not include an  
28

1 adequate assessment of potential pollutant sources, including information such as an  
2 identification of the Facility's road network as a pollutant source; and fails to  
3 implement and maintain requisite advanced BMPs necessary to reduce or prevent  
4 discharges of pollutants in its storm water discharge in a manner that reflects best  
5 industry practice considering BAT/BCT. According to information available to EDC,  
6 PCEC's SWPPP has not been evaluated to ensure its effectiveness and revised where  
7 necessary to further reduce pollutant discharges.

8         56. On or about September 29, 2017, PCEC submitted a "Storm Water Level  
9 1 ERA Report" to the State Board's SMARTS system. On or about June 11, 2018,  
10 PCEC submitted a revised "Storm Water Level 1 ERA Report" to the State Board's  
11 SMARTS system. PCEC's ERA Level 1 report addresses the Facility's exceedance  
12 of the NAL for TSS during the 2016-2017 reporting year. Although the report  
13 addresses TSS, PCEC failed to identify sufficient additional BMPs necessary to  
14 prevent future NAL exceedances or to comply with BAT/BCT requirements of the  
15 General Permit. The report fails to address any TSS exceedances associated with the  
16 Facility's extensive road network. The failure of the ERA to include sufficient  
17 additional BMP measures identified could not and has not helped PCEC to achieve  
18 the applicable NALs for TSS.

19         57. Information available to EDC indicates that PCEC is discharging storm  
20 water containing excessive pollutants during rain events to channels that flow to either  
21 San Antonio Creek or into Orcutt Creek and then into the Santa Maria River.

22         58. Plaintiff is informed and believes, and thereupon alleges, that PCEC has  
23 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs  
24 consistent with the General Permit.

25         59. Information available to Plaintiff indicates that PCEC has not fulfilled  
26 the requirements set forth in the General Permit for discharges from the Facility due to  
27 the continued discharge of contaminated storm water. Plaintiff is informed and  
28

believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Failure to Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

60. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

61. The General Permit's SWPPP requirements and Effluent Limitation V(A) require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. PCEC has failed to implement BAT and BCT at the Facility for its discharges of TSS, pH, and other un-monitored pollutants in violation of Effluent Limitation V(A) of the General Permit.

62. Each day since July 15, 2015, that PCEC has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

63. PCEC has been in violation of the BAT/BCT requirements every day since July 15, 2015. PCEC continues to be in violation of the BAT/BCT requirements each day that they fail to develop and fully implement BAT/BCT at the Facility.

### **SECOND CAUSE OF ACTION**

#### **Discharges of Contaminated Storm Water in Violation of Permit Conditions and the Act (Violations of 33 U.S.C. §§ 1311, 1342)**

64. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

1           65. Discharge Prohibition III(C) of the General Permit prohibits storm water  
2 discharges and authorized non-storm water discharges that cause or threaten to cause  
3 pollution, contamination, or nuisance. Receiving Water Limitation VI(B) of the  
4 General Permit prohibits storm water discharges to any surface or ground water that  
5 adversely impact human health or the environment. Receiving Water Limitation  
6 VI(A) and Discharge Prohibition III(D) of the General Permit prohibit storm water  
7 discharges that cause or contribute to an exceedance of any applicable water quality  
8 standards contained in Statewide Water Quality Control Plan or the applicable  
9 Regional Board's Basin Plan.

10           66. Plaintiff is informed and believes, and thereupon alleges, that since at least  
11 March 20, 2017, PCEC has been discharging polluted storm water from the Facility in  
12 excess of applicable water quality standards in violation of Receiving Water  
13 Limitation VI(A) and Discharge Prohibition III(D) of the General Permit.

14           67. During every rain event, storm water flows freely over exposed materials,  
15 disturbed portions of earth, and other accumulated pollutants at the Facility, becoming  
16 contaminated with sediment, pH-altering substances, and other un-monitored  
17 pollutants at levels above applicable water quality standards. The storm water then  
18 flows untreated to channels that flow to either San Antonio Creek or into Orcutt Creek  
19 and then into the Santa Maria River.

20           68. Plaintiff is informed and believes, and thereupon alleges, that these  
21 discharges of contaminated storm water are causing or contributing to the violation of  
22 the applicable water quality standards in a Statewide Water Quality Control Plan and/or  
23 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation  
24 VI(A) and Discharge Prohibition III(D) of the General Permit.

25           69. Plaintiff is informed and believes, and thereupon alleges, that these  
26 discharges of contaminated storm water are adversely affecting human health and the  
27 environment in violation of Receiving Water Limitation VI(B) of the General Permit.  
28

70. Every day since at least March 20, 2017, that PCEC has discharged and continue to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

**THIRD CAUSE OF ACTION**  
**Failure to Prepare, Implement, Review, and Update**  
**an Adequate Storm Water Pollution Prevention Plan**  
**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

71. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

72. The General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992, or since the date a facility first received coverage under the General Permit.

73. PCEC has failed to develop and implement an adequate SWPPP for the Facility. PCEC's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, PCEC's failure to include an adequate assessment of potential pollutant sources, and failure to implement and maintain requisite advanced BMPs.

74. PCEC has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

75. Each day since July 15, 2015, that PCEC has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

76. PCEC has been in violation of the SWPPP requirements every day since July 15, 2015. PCEC continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

**FOURTH CAUSE OF ACTION**  
**Failure to Develop and Implement an**  
**Adequate Monitoring and Reporting Program**  
**(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

77. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

78. The General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992, or since the date a facility first received coverage under the General Permit.

79. PCEC has failed to develop and implement an adequate monitoring and reporting program for the Orcutt Hill oil and gas field.

80. PCEC's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, its failure to sample from all nine sampling locations at the Facility during the 2015-2016 and 2016-2017 reporting years, and its failure to monitor storm water discharges for chemicals likely to be present in the Facility's discharges.

81. Each day since July 15, 2015, that PCEC has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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**FIFTH CAUSE OF ACTION**

**Failure to Comply with General Permit Evaluation  
and ERA Requirements**

**(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

82. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

83. The ERA Level 1 report must, among other requirements, “[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit.” General Permit, § VII.C.1.c.

84. The additional BMPs identified in PCEC’s revised ERA Level 1 report, coupled with the existing protection and other measures identified in the Facility’s SWPPP, are insufficient to prevent future NAL exceedances. Nor are those measures sufficient to achieve the General Permit’s BAT/BCT requirement.

85. Each day since at least September 29, 2017, that Defendants have failed to develop and implement an adequate ERA Level 1 report in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Every day an adequate ERA report is absent is an ongoing and continuous violation of the Act.

**VII. RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

a. Declare PCEC to have violated and to be in violation of the Act as alleged herein;

b. Enjoin PCEC from discharging polluted storm water from the Facility unless authorized by the General Permit;



1 c. Enjoin PCEC from further violating the substantive and procedural  
2 requirements of the General Permit;

3 d. Order PCEC to immediately implement storm water pollution control  
4 and treatment technologies and measures that are equivalent to BAT or BCT;

5 e. Order PCEC to immediately implement storm water pollution control  
6 and treatment technologies and measures that prevent pollutants in the Facility's storm  
7 water from contributing to violations of any water quality standards;

8 f. Order PCEC to comply with the Permit's monitoring and reporting  
9 requirements, including ordering supplemental monitoring to compensate for past  
10 monitoring violations;

11 g. Order PCEC to prepare a SWPPP consistent with the Permit's  
12 requirements and implement procedures to regularly review and update the SWPPP;

13 h. Order PCEC to provide Plaintiff with reports documenting the quality  
14 and quantity of their discharges to waters of the United States and their efforts to  
15 comply with the Act and the Court's orders;

16 i. Order PCEC to pay civil penalties of up to \$37,500 per day per  
17 violation for each violation of the Act since October 28, 2011, up to and including  
18 November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015,  
19 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and  
20 40 C.F.R. §§ 19.1 - 19.4;

21 j. Order PCEC to take appropriate actions to restore the quality of waters  
22 impaired or adversely affected by their activities;

23 k. Award Plaintiff's costs (including reasonable investigative, attorney,  
24 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.  
25 § 1365(d); and,  
26

27 ///

28 ///

1                   1. Award any such other and further relief as this Court may deem  
2 appropriate.

3  
4 Dated: July 12, 2018

Respectfully submitted,

5 LOZEAU DRURY LLP

6  
7 By: /s/ Douglas J. Chermak  
8 Douglas J. Chermak

9  
10 ENVIRONMENTAL DEFENSE CENTER

11  
12 /s/ Alicia Roessler (as authorized on 7/12/18)  
13 Alicia Roessler

14 /s/ Margaret Hall (as authorized on 7/12/18)  
15 Margaret Hall